

# PUBLIC DEFENDER NEWS

## CHIEF'S CORNER

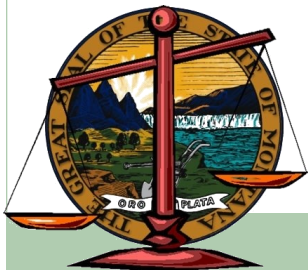
As you peruse this Newsletter, please take a moment to note our format changes. We are working to improve the quality and the content of the information provided. Jessie Reehl in Central Services developed this new and improved format, which enhances the “readability” of the articles. Cathy Doyle spearheaded a survey of our readers, with the goal of making the content more focused to meet your needs and interests.

We received 147 responses to the survey, with OPD employees making up about two-thirds of the respondents, and contract attorneys comprising the other one-third. Thirty nine respondents offered suggestions as to topics of interest they’d like to see in future newsletters. These suggestions included practice tips, CLE notices, topics focused on tips for support staff issues, people-oriented articles and articles with a regional focus, discussions on budget and legislative issues, and information relative to contract and conflict attorneys. We welcome these suggestions, and I invite you to consider submitting articles or items of interest for inclusion in future newsletters.

I urge you to read Mark Beck’s moving and poignant account of the impact one client can have. Mark reminds us of the humanity of the people we serve.

*Welcomes.* We welcome two new members to the Public Defender Commission. Roy Brown of Billings, who formerly served as a state Senator, was appointed as a public representative nominated by the Senate President. Dr. Michael Metzger of Billings was appointed as an employee of an organization providing addictive behavior counseling.

Peter Ohman, formerly our Region 8 deputy public defender, has taken over as OPD’s Training Coordinator. Annie DeWolf is the new Region 8 Deputy. Annie served as staff attorney in the



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## SPECIAL POINTS OF INTEREST

- A Lesson Learned
- Working Positive
- She-Hulk (Really!)

## APPELLATE NEWS



Wade Zolynski,  
Chief Appellate Defender

### **ISSUE: Using Positive Test Results Obtained in a Treatment Court to Charge a New Case.**

Has anyone had an officer or prosecutor, as a member of a treatment court team, use a positive drug test to investigate, initiate, and prosecute a new felony charge?

Assistant Appellate Defender Eileen Larkin has this very issue set for oral argument on a date yet to be determined.

Federal law prohibits disclosure and use of information obtained in a federally assisted drug abuse treatment program for the purpose of criminal investigation or prosecution. 42 C.F.R. 2.12(a)(1)-(2) and (d)(1). Montana law provides: "Anyone in receipt of drug test results shall maintain the information in confidentiality." Mont. Code Ann. 46-1-1111(4).

If you have a similar case, here's the link to the briefs in *State v. Plouffe* (DA 12-0638) to help you. Please feel free to give us a call at 444-9505.

<http://supremecourtdocket.mt.gov/search/case?case=15681>

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*"... every day they bring the spirit of Gideon with them."*

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## SUPPORT STAFF WIN CASES

Their names never appear on the briefs we file with the Montana Supreme Court. But, they have touched every one. When our cases appear in the news they are not mentioned. But, our clients know them by voice and by name. We don't circulate congratulatory emails crediting their service when we win cases.

But, they work hard and smile anyway. I, as an attorney, tend to think that cases are won based solely on my sharp and persuasive legal analysis. I am wrong. The Office of the Appellate Defender (OAD) would not function, at all, without its support staff. No appeals would be filed. No briefs would be produced. No clients would be freed.

OAD employs three talented and dedicated support staff. Let me introduce you. In the center is Laura Schultz, Office Manager. Left is Pamela Rossi,

Administrative Assistant. Right is Tatiyana Grotbo, Administrative Assistant.

They are easily the busiest members of OAD's team. And, every day they bring the spirit of

*Gideon* to work with them; thereby fulfilling OAD's mission to provide independent, effective, high-quality representation to those we represent.

Thank you.



## CHIEF'S CORNER CONTINUED FROM PG 1

Bozeman office, and the clients of Region 8 will continue to be well-served with Annie running the office.

Wendy Johnson has joined OPD as our new Contracts Manager. Wendy worked as a staff attorney in Region 4, and then transferred to the Appellate Defender Office. She returns to OPD after spending a couple of years in private practice.

*Indigency determination process.* The process by which we determine whether clients are eligible to receive services was a focal point of the performance audit conducted by the Legislative Audit Division in 2012. We have taken a number of steps to improve our practices and processes. The Public Defender Commission approved a new, one-page application form, and we have been using this new form in Regions 6 and 8 as part of a pilot project. We have periodically surveyed the users of this new form, and reports are encouraging. The new form is easier to use and enables staff to process the applications more efficiently.

Chris Thomas from the Bozeman office has been instrumental in developing and overseeing this process, and will provide training on the new form and a new policy during the upcoming support staff training conference.

*Legislative/Budget Update.* In this edition, Harry Freebourn provides a comprehensive review of the process by which our budget issues are addressed by the Legislature. As you consider the process, you will see that it is an on-going effort.

We report periodically to two legislative committees that meet during the interim period between legislative sessions. The Law and Justice Interim Committee monitors the activities of OPD, as well those of the Department of Corrections, the Department of Justice, and the Judicial Branch. This committee examines policy issues and makes recommendations to the full legislature. The Legislative Finance Committee is a permanent joint committee of the Legislature, and meets between sessions to review fiscal issues.

Agendas, reports and other materials regarding our appearances before these committees are available on the state legislative branch website.

*Bill*

## FEARLESS LEADERS!

*Peter Ohman, Training Coordinator*

On March 6 Chief Hooks gathered the Regional Deputy Public Defenders in Helena for a management conference. The morning session focused on coaching and appraisals by managers. Chance Eaton of the State's Professional Development Center conducted the training. Attendees considered a variety of issues with a lively discussion emanating from the topic of recruitment and retention.



The afternoon session was a general regional meeting with a variety of topics being considered and debated, including case weights, timekeeping and the many reports generated by our case management system.

### Let's Work Positive!

Here are a few ways to start.

**Focus on what you're good at.** Instead of focusing on your faults, incorporate into every workday something at which you excel: staying organized, say, or writing compelling briefs. Instead of obsessing over a goal you didn't reach, move on and focus your energy on current successes, and ones soon to come.

**Practice small steps.** Establish more attainable goals. Long-term goals are important and valid, but you can balance them with incremental goals along the way. When such smaller goals are reached, celebrate—marking even small achievements will help boost energy levels and focus.

**Find the positive in coworkers, and avoid the negative.** If you're faced with a workplace bully, don't "try harder" to make them like you. Instead, avoid confrontation and try seeking out positive mentors or colleagues.

**Mentor.** Altruistic behavior can help create lasting happiness. Selfless acts of mentoring can benefit you as it benefits others, resulting in greater job satisfaction and commitment.

**Express thanks.** The ability to express gratitude and appreciation can easily be put in place at work, showing thanks to the coworker who filled in while you were sick or the one who praised your efforts in a group meeting. When people give thanks to those who deserve it, they are happier and less depressed weeks and months later. Recognizing others' contributions to your success can also help enforce positivity and respect among coworkers.

Excerpted from [Forbes.com](http://Forbes.com)

## A LESSON LEARNED

*Mark Beck is an investigator attached to Region 2. He came to OPD almost three years ago after retiring from the Laramie, WY Police Department after nearly 22 years. He retired with the rank of Sergeant and was the supervisor of the Investigations Unit. He has worked in the Montana State Crime Lab and in the Anchorage, AK Scientific Crime Detection Laboratory. His list of special training goes on page after page and he can, (but seldom does), use more initials after his name than psychiatric expert witnesses. Among many other special – isms, he is a Certified Latent Print Examiner and Certified Crime Scene Analyst. The following letter is an example of what makes Mark a very unique person. We can all take a lesson from the experience he shares. —Dave Stenerson*

*By Mark Beck, Missoula*

I am a criminal defense investigator for OPD.

A while back, an attorney in our office asked me if I would be willing to escort a client from jail to access a computer/printer to get some documentation from the VA that would help him get into a prerelease program. I wasn't really keen on it, escorting prisoners really isn't in the investigator's job description, but I'm usually good for something new and different. I suppose as a left over from my "I was once a cop" syndrome; I thought I could safely handle a prisoner and it would get me out of the office for a morning.

I discussed it with our RDPD and he gave his blessing as long as I was okay with it. So...the attorney had the judge sign an order that gave custody of our client to me for two hours and I presented the order to the detention facility. They weren't keen on it either but there was a signed order from a district court judge so they eventually complied. As they brought our client into the booking room, they asked how I wanted him. . . street clothes, jail suit, handcuffed, shackled?

I didn't know much about him, I knew he was a prisoner, that he had several charges to include a felony

endangerment and a probation violation, and that he apparently had a substance abuse problem. I knew he was a vet because we were trying to get documents from the VA. But most of all, I knew he was much bigger, stronger, and younger than me so I asked that he be in the orange jumpsuit with jail clogs, and that he be shackled and in belly chains.

**As they brought our client into the booking room, they asked how I wanted him. . . street clothes, jail suit, handcuffed, shackled?**

Before we left the jail, I asked him to promise that he would abide by the rules and not try to escape or hurt anyone...the typical cop to prisoner stuff. He politely promised.

I placed him in my car, buckled him in and drove to my office. He didn't speak much and neither did I, but what conversation we did have was polite and respectful. Once at my office, I was attempting to retrieve the documents he

needed but was having difficulty navigating the government website maze. Our client asked if he could "please" try. After the obligatory promises not to try anything and to let me re-secure the cuffs after we were done, I took off the hand cuffs and let him use my computer and telephone.

He was able to reach someone from the VA on the telephone and it wasn't long before he was able to retrieve and print the documents he needed on-line. It was obvious that this was a very intelligent and capable person.

After securing the documents, we took them to the housing office. Our client was still in chains and the orange suit. It was cold out, and I asked him if he needed a coat. He told me that he didn't, he loved the fresh cold air and was trying hard to get his life together.

We went to the housing office which was very busy and we were made to wait. Being in orange and shackles he got the look from everyone. Despite that he was very polite and respectful and even the people working there warmed to him in very short order.





After concluding our business, I took him back to detention. He thanked me for my assistance, I left him at booking, and really never much thought about him again. I would hear his name from time-to-time about the office so I knew he was still around and still in trouble but I never had anything more to do with him.

Then yesterday, I saw his obituary in the newspaper. This young man was 24 years old, an Airborne Army Ranger, a decorated combat veteran, with two tours in Afghanistan. After his second tour he suffered with PTSD and was never able to get it under control. He struggled with substance abuse and self-destructive behaviors...his felony endangerment was a result of intoxicated driving, wrong way on I-90, not a crime of violence. Before he served our country he was a volunteer high school wrestling coach, well loved, and devoted to his family. How did he die, I don't know. After 36 years in a career based on human tragedy, I can offer a pretty good guess though.

I am reminded of scenes from an earlier war where our soldiers were led around in public, in a foreign land, shackled and in their prisoner uniforms, to their humiliation and dehumanization. I can't even imagine the embarrassment and humiliation I caused this young man by escorting him around in public in the town where he graduated high school and coached, in a jail uniform and in shackles. He was a prisoner, of a war he never was able to come home from. But this is a personal statement, not a political one.

Could I have done anything that would have made a difference? Maybe not...probably not. But I still feel guilty that I did not give this young man the respect he deserved or the respect that he had earned by brave and honorable service to our country. I know I don't get a do-over. I can only apologize and try harder next time. There are unfortunately many more like him so I'm sure I will have multiple opportunities to do better.

But for Airborne Army Ranger J.C. Widdicombe, I can only say, thank you for your service, and I'm so sorry I failed you.

## CRIMEA

The recent controversial poll in the Ukraine showed Crimean voters overwhelming supported joining Russia.

Historically, the city of Sevastopol has been an important naval base for the defense of Russia against invading Turks. In 1854 Britain and Russia entered into armed conflict to determine which empire would make the faltering Ottoman Empire a satellite under their respective domains. For most of us the most familiar battle is the "Battle of Balaclava", October 25, 1854 when Lord Raglan ordered Lord Lucan to advance and prevent Russians from removing the British cannons, captured following the Turkish retreat. The charge was made up of

a brigade of 670 men from the 4<sup>th</sup> and 13<sup>th</sup> Light Dragoons, 17<sup>th</sup> Lancers and the 8<sup>th</sup> and 11<sup>th</sup> Hussars. The



brigade advanced 2,000 yards down a valley where Russian artillery waited. The majority of the 11<sup>th</sup> Hussars reached the guns and were able to destroy them. The brigade was able to retreat with the loss of only 120 men despite the suicidal nature of the charge.

British war correspondents sent the story back to England with the misinformation that 120 men survived. Thus, inspiring Alfred, Lord Tennyson to compose the poem "[Charge of the Light Brigade](#)."

Click the link for more on the [Crimea](#).



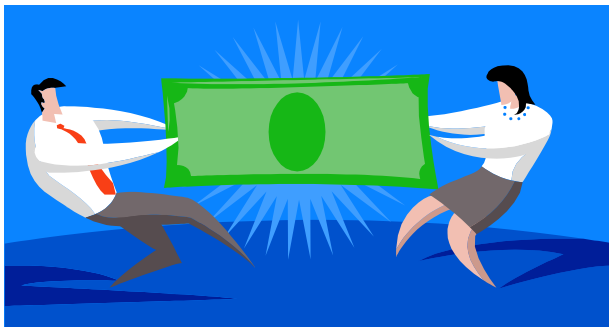
*Waiting for spring in Hamilton . . .*

## THE APPROPRIATION PROCESS—HOW OPD IS FUNDED

*Harry Freebourn*

Appropriations are sometimes referred to as the budget or checkbook — monies that agencies use to pay for resources that are necessary to fulfill their missions. Only the legislative branch can approve appropriations for the State, but the executive branch produces the underlying budget requests for all three branches of state government (executive, legislative and judicial). One important factor when producing a budget is that by law the State must have a balanced budget. In other words, it can only spend what it takes in as revenue. Therefore, revenue estimates must be produced for the budget period before appropriations for the same time frame can be set.

What is the appropriation process? In January of each odd numbered year, the legislature meets to enact law and approve appropriations for the three branches of government. As mentioned previously, the legislature uses the budget that it receives from the executive branch as its starting point for this process. The next legislature is scheduled to meet to do this work beginning in January 2015. However, before the legislature convenes there is a lot of work to be done to produce a State budget. The budget process is referred to as the Executive Planning Process or EPP. OPD is an executive branch agency and only one of many agencies that compete for funding from the state.



Here are the steps that OPD must go through to get an approved appropriation.

1. The state uses base budgeting. This type of budgeting assumes that an agency receives what it spent in its base year and does not need to breakout in detail every dollar in its base. OPD will develop its base budget. The base year is FY 2014 or the current year in which we are operating (July 1, 2013 through June 30, 2014). Our base budget includes payroll and operating costs. Our payroll budget is developed by determining the number of positions that exist as of a certain

date in early July following the base year (this coming July). This date is referred to as the “snapshot” because it is as if a picture is taken of all of those individuals employed by the agency as of that date. The current salary on the snapshot date for each position is the salary that is placed into the base budget. Unfilled positions are funded at 75% of the current market value. Operating costs are expenditures for non-payroll items like rent, travel, contractor payments, communication costs, etc. Some of these costs receive an increase for the rate of inflation or a decrease for deflation.

2. Expenditures over and above the base are requested in a decision package (this is a specific budget item that is decided upon separate from the base budget or any other decision package). These decision packages are generally for costs that did not exist for the agency during the base year. For example, if an agency believes that it needs more state hired attorneys to work increased caseloads, it could develop a decision package that requests funding for costs related to these positions (such as base pay and benefits, office equipment, and supplies).
3. OPD’s base budget and decision packages are prepared by agency management. These items are presented to the Montana Public Defender Commission as they monitor and supervise OPD and must by statute approve its budget submission. The Commission can approve or deny any part of the budget, add to the budget, or change the scope or dollar value of any budget item. The Commission first reviewed the budget for the 2017 biennium at its February 24, 2014 meeting. At that meeting the Commission activated its Budget Committee to review detailed budget items and provide a recommendation to the full Commission at its next meeting, scheduled for April 3. Once the Commission approves a budget it is submitted to the Governor’s Budget Office, referred to as the Office of Budget and Program Planning (OBPP).
4. OBPP reviews all budgets from all branches of government and all agencies, and they must by law produce a balanced budget. They usually undertake this balancing process between April and September. During this time frame agency representatives meet with OBPP to discuss their budgets. OBPP can approve or deny any budget amount or any specific item, or change the scope of any item or its estimated dollar value.
5. Once the budget is finalized by OBPP and approved by the Governor, it is packaged for delivery to the

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## APPROPRIATION PROCESS CONTINUED FROM PG 6

legislative staff in early November, giving the staff time to analyze it and prepare comments before the legislature convenes in January.

6. When the legislature convenes, their staff provides them with the Governor's recommended budget. The legislature's leadership appoints committees to review budget requests. The Senate appoints members to Senate Finance and Claims Committee and the House appoints members to the House Appropriations Committee. These two committees select members that will form joint appropriations subcommittees. The subcommittees each have responsibility for specific agencies, and they hear testimony from the agency and the public about programs, budgets, and decision packages. The joint subcommittees approve, deny, or adjust budgets and recommend a budget for each agency to the Senate Finance and House Appropriations Committees.
7. Senate Finance and House Appropriations may conduct additional hearings on budgets. These committees can approve, deny, or adjust budgets.
8. The budgets then go to the full House and Senate for approval, disapproval or adjustment.
9. Finally the House and Senate form joint committees to work out differences in budgets and these joint committees can approve, disapprove, or adjust any budget.

Once the budgets are finalized the appropriations are distributed to each agency for use in the next biennium. The 2017 biennium consists of two fiscal years: FY 2016 (July 1, 2015 through June 30, 2016) and FY 2017 (July 1, 2016 through June 30, 2017).

Agency management and the Commission are working hard to obtain appropriate funding for our public defender system, but as you can see, there are many potential obstacles along the way.



## STRESS MANAGEMENT? THERE'S AN APP FOR THAT!



Learning to [develop a relaxation response](#) reduces the damaging effects of stress and

gives us greater control. It can minimize the powerful impact of stress. Eating properly, following a fitness program, getting enough rest and, yes—learning how to relax—will all work to improve stress.

We know that virtually all OPD employees operate under a staggering workload. Add to that a constant flood of sensory overload—email, internet, texts and phones that repeatedly chirp to get our attention. Short of turning all those devices off, what can we do? Try using that phone to practice relaxation with an app such as Relax Lite, available for both [Android](#) and [Apple](#) devices.

Make time to do things that will help reduce stress—golf, dance, swim or hike; get a massage; commune with nature; listen to music; meditate or pray. Take nice, deep breaths. The more you practice deep breathing, the quicker your mind can go to a peaceful place.

*(Adapted from an article in [OfficePro](#) magazine.)*



## 10 TIPS FOR BETTER EMAIL ETIQUETTE

1. **Be informal, not sloppy.** Follow standard writing protocol. Your email message reflects you and the agency, so use traditional spelling, grammar, and punctuation rules.
2. **Make the subject line count.** The subject line is arguably the most prominent part of an email — it can determine whether or not your email will be opened/read. Take the time to write a meaningful subject line that is brief and relevant to the content of your email. Be sure to correct misspellings and typos, which will make you look sloppy and vulnerable to spam filters.
3. **Keep messages brief and to the point.** Just because your writing is grammatically correct does not mean that it has to be long. Concentrate on one subject per message whenever possible.
4. **Remember that email isn't private.** Email created, sent or retrieved over the state's system are the property of the State of Montana. You should not have any expectation of privacy for any message and should use your best judgment in sending confidential messages. Never put in an email message anything that you wouldn't put on a postcard. Remember that email can be forwarded, so unintended audiences may see what you've written. You might also inadvertently send something to the wrong party, so always keep the content professional to avoid embarrassment.
5. **Be sparing with group email.** Send group email only when it's useful to every recipient. Use the "reply all" button only when compiling results requiring collective input and only if you have something to add to the conversation. If you have a comment/question relevant only to the sender or a few people on the recipient list, then remove all but the relevant people from the email reply.
6. **Understand the To and CC fields.** The recipients listed in the To field are the direct addressees of your email. These are the people to whom you are writing directly. CC is for anyone you want to keep in the loop but are not addressing directly in the email. The person(s) in the CC field is being sent a copy of your email as an FYI. Recipients in the To field are expected to reply or follow up to the email, while those in the CC field are not.
7. **Use a signature that includes contact information.** To ensure that people know who you are, include a signature that has your contact information, including your mailing address and phone numbers. Don't use graphics in your signature.
8. **Avoid large files and graphics.** Sending a large file to multiple recipients could severely impact the network. Contact your IT administrator for help with disseminating these types of documents. Similarly, the use of graphics in auto-signatures or other parts of messages or attachments should be avoided because they greatly increase the size of a message.
9. **Limit back and forth exchanges.** If you find yourself in a back and forth email exchange, make an effort to talk in person instead. While email is a powerful communications tool, it can be misinterpreted and downright inefficient. Resolve the back and forth emails by picking up the phone or meeting with the recipient in person.

10. **Remember that your tone can't be heard in email.** Have you ever attempted sarcasm in an email, and the recipient took it the wrong way? Email communication can't convey the nuances of verbal communication. In an attempt to infer tone of voice, some people use emoticons, but use them sparingly so that you don't appear unprofessional. Also, don't assume that using a smiley will diffuse a difficult message.

## MEET SHE-HULK!



Some might conceivably take issue with her scanty attire. But the fictional heroine of a new Marvel Comics series is surely worthy of admiration both for her ability to bench-press a bus and the fact that she recovered from being fired from her job by establishing her own law firm in Brooklyn, N.Y.

The original Hulk's cousin, She-Hulk has carved her own identity in comics thanks to her wildly irreverent personality. In an issue of *Solo Avengers*, the jade giantess made quite an impression during oral arguments before the U.S. Supreme Court.

Known as Jennifer Walters in ordinary life, She-Hulk works her network to develop legal business from superhero connections with the Fantastic Four and the Avengers.

"She's not grim or embittered about the fact that she's not like everyone else," creator Charles Soule, an attorney, says of the star of his series, who seeks to achieve work-life balance. "She celebrates it, and that makes a person strong whether they happen to be a 7-foot-tall gal who can bench-press a bus or not."

(Excerpted from the [\*ABA Journal\*](#))